No. 81-2179

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In The

Supreme Court of the United States

October Term, 1981

GOLD DEPOSITORY AND LOAN COMPANY, INC.,

Petitioner,

vs.

2720 WISCONSIN COOPERATIVE ASSOCIATION, INC., *et al.,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTION PRESENTED

Whether prevention by injunction of enforcement of liens on the basis of "privity" without consideration of the validity of such liens against eleven mutual ownership contracts and prevention by forcing physical transfer of the original mutual ownership contracts to a cooperative housing corporation without compensation constitutes taking of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

LIST OF ALL PARTIES TO PROCEEDINGS PURSUANT TO SUPREME COURT RULE 21(b)

Gold Depository and Loan Company, Inc. is the petitioner-defendant and 2720 Wisconsin Avenue Cooperative Association, Inc.; David C. Spriggs; H. James Zellers; John Brian Daly; Peter C. Woodford; Stephen L. Wilkins; Abbas Abutaa; Michael P. Arra; Angelo L. Bardine; Paula B. Bell; C. M. Broutsas; Thomas E. Coler, Jr.; G. David Crane; Cecile de Rouchefort; Geraldine Garrity; James C. Hassan; Ronald L. Hayes; Sachiko Kawaguchi; Margaret McManus; Catherine G. Moran; Christie S. Rogers; Viviane Russell; Verdelia F. Scott; Joyce K. Turner; L. J. Wells and William L. Wolfe are the respondents-plaintiffs.

STATEMENT PURSUANT TO SUPREME COURT RULE 28.1

Petitioner Gold Depository and Loan Company, Inc. is wholly owned by Co-Op Investment Bankers, a registered Maryland limited partnership.

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No.

In The

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October Term, 1981

GOLD DEPOSITORY AND LOAN COMPANY, INC.,

Petitioner,

vs.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

The petitioner Gold Depository and Loan Company, Inc. prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals entered in the above entitled case on February 2, 1982.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals entered on February 2, 1982, is reported at 441 A.2d 956 and is set forth in the Appendix, *infra* (Appendix 1).

The opinions of the Superior Court of the District of Columbia are reported at 106 Washington Law Reporter 1417 (liability) excerpts of which are set forth in petitioner's appendix (Appendix 2) and 107 Washington Law Reporter 117 (damages), excerpts of which are set forth in the Appendix (Appendix 3).

A third Superior Court opinion (Memorandum Opinion, Order and Final Judgment) is unpublished, excerpts of which are set forth in Appendix 5.

A fourth Superior Court opinion dated August 10, 1979, also is unpublished and is set forth in full in Appendix 15.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 2, 1982. A timely petition for rehearing en banc was denied by order entered on February 23, 1982. This petition for certiorari was filed within 90 days from that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article V, Amendments to the Constitution of the United States, provides in part:

> "No person shall . . . be deprived of life, liberty, or property without due process of law. . . ."

28 U.S.C. §1257(3) provides in relevant part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could

be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari. . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution. . . .

For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

STATEMENT OF THE CASE

This case derives from the same litigation and involves the same real estate located at 2720 Wisconsin Avenue, N.W., Washington, D.C., which is the subject of a contemporaneous petition for certiorari filed by Wisconsin Avenue Associates, Inc., directed to the District of Columbia Court of Appeals (No. 81-2122).

Wisconsin Avenue Associates, Inc., the real estate developer, borrowed a total of $93,000 from a related limited partnership, 2720 Limited Partnership, evidenced by a series of notes dated August 6, 1976, and secured by a second lien on eleven mutual ownership contracts held by Wisconsin Avenue Associates, Inc., for eleven then unsold residential units (Appendix 12).

The main litigation began by a complaint filed on March 18, 1976, by 2720 Wisconsin Avenue Cooperative Association, Inc., described in the petition of Wisconsin Avenue Associates, Inc. The case did not come to trial until April 1978.

Wisconsin Avenue Associates, Inc. again borrowed more money from a related business entity, Management Services Group, Inc., in the amount of $150,000, evidenced by a note dated

January 5, 1978 (Appendix 13) and secured by a third lien on the same mutual ownership contracts for the then unsold residential units. The second and third liens were perfected by the appropriate filing under the Uniform Commercial Code of the District of Columbia (Appendices 12, 13).

These promissory notes were transferred to Co-Op Investment Bankers, a Maryland limited partnership and successor to 2720 Limited Partnership.

Gold Depository and Loan Company, Inc., petitioner herein, was incorporated in Nevada on March 17, 1978, and it received the promissory notes dated August 6, 1976, and January 5, 1978, in exchange for stock issued to Co-op Investment Bankers (Appendix 11).

Thereafter, on June 27, 1978, the trial court judge issued his first opinion in the bifurcated trial which determined liability and concluded that Wisconsin Avenue Associates, Inc. was liable for breach of contract. The trial court ordered Wisconsin Avenue Associates, Inc. to cease and desist from ". . . any and all efforts to sell or lease or lease the remaining unsold units. . ." Further, the court said: "As a measure of equitable relief as to which plaintiffs have established their entitlement, the court hereby enjoins the defendants, each and all of them, from performing any act designed to accomplish the sale or further leasing of the eleven (11) unsold units pending final adjudication of this case." (Appendix 2).

It is emphasized that the promissory notes dated August 6, 1976, and January 5, 1978, secured by the second and third liens on the mutual ownership contracts for the then unsold residential units were made before any judgment by the trial court and were not involved in any way in the main litigation between Wisconsin Avenue Associates, and 2720 Wisconsin Avenue Cooperative

Association, Inc. [*See* question in report of Auditor Master adopted by the trial court in its Memorandum Opinion, Order and Final Judgments issued on April 27, 1979 (Appendix 5).]

By Paragraph 14, the trial court rescinded the ". . .rights and obligations conferred upon the parties by the Mutual Ownership Contract and by any other underlying agreements, including and especially the Assignment of Purchase Agreement dated December 6, 1974. . . with complete right, title and interest in those units vesting only in 2720 Wisconsin Avenue Cooperative Association, Inc. . . . ."

By Paragraph 15, the trial court made permanent its injunction pendente lite by ordering that "Defendants. . . and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of. . ." the named then unsold resident units (Appendix 5).

By letters dated July 10, 1979 (Appendix 7), Gold Depository and Loan Company, Inc., petitioner herein, gave notice to Wisconsin Avenue Associates, Inc., of default and stated its intention to foreclose on the mutual ownership contracts for the then unsold residential units if the defaults were not cured by payment.

On July 13, 1979, 2720 Wisconsin Avenue Cooperative Association, Inc., obtained a Temporary Restraining Order enjoining the proposed foreclosure and also obtained an Order to Show Cause why certain named individual defendants should not be held in contempt of the final order issued by the trial court on April 27, 1979 (Appendices 8, 9).

Gold Depository and Loan Company, Inc., on August 1, 1979, filed a motion to dissolve the Temporary Restraining Order.

Gold contended that it was not a party to the main litigation; that its claims were based on valid liens created before any judgment by the trial court; and that preventing Gold from enforcing its liens would be a taking of property without due process of law (Appendix 10).

A hearing was held on August 2, 1979, and the trial court issued its order dated August 10, 1979, containing a preliminary injunction restraining Gold from taking any action with respect to the named then unsold residential units and directed Gold to deliver the original mutual ownership contracts to 2720 Wisconsin Avenue Cooperative Association, Inc. (Appendix 16).

Gold complied under protest with that order (Appendices 16, 17) and appealed the trial court's decision to the District of Columbia Court of Appeals. In its civil appeal statement to the District of Columbia Court of Appeals (Appendix 18) and in its brief Gold argued that its property had been taken without due process of law (Appendix 19).

The District of Columbia Court of Appeals affirmed the trial court's decision in all respects.

REASONS FOR GRANTING THE WRIT

The decisions of this Court clearly establish that it will issue writs of certiorari directed to the District of Columbia Court of Appeals. *See Fisher v. United States,* 328 U.S. 463 (1946); *Griffin v. United States,* 336 U.S. 704 (1949).

The decisions also hold that this Court will review decisions by the District of Columbia Court of Appeals where "egregious error" has been committed. *See Miller v. United States,* 357 U.S. 301 (1958); *Pernell v. Southall Realty,* 416 U.S. 363 (1974); *Whalen v. United States,* 445 U.S. 687 (1980).

In this case, the record shows that Gold was enjoined from enforcing its liens and was forced to tender the mutual ownership contracts to 2720 Wisconsin Avenue Cooperative Association, Inc. solely on the court's conclusion that Gold was "in privity" with the individual defendant Aleksandrs V. Laurins. Gold's contention that the court's action was a taking of property without due process of law was brushed off without any discussion by both the trial court and the appellate court.

But the fact is that the predecessor limited partnerships and the successor limited partnership, Co-Op Investment Bankers, which now owns all of the stock of Gold (Appendix 11) who supplied the money to finance the developer, Wisconsin Avenue Associates, Inc., were and are composed of a general corporate partner and approximately 50 limited partners. Thus, although Aleksandrs V. Laurins did control day-to-day management, he could not make any significant investments of partnership assets without the approval of a board of trustees elected by the limited partners (R-).

The fact also is that the validity of the promissory notes which Gold sought to enforce was not litigated before either the trial court or the appellate court. (*See* Appendices 1, 2, 3, 15.) The appellate court did make the statement that Wisconsin Avenue Associates, Inc. could not "pledge" the Mutual Ownership Contracts (Appendix 1, Parts VIII, IX), but petitioner submits that this statement is an arbitrary legal conclusion interpreting, without benefit of evidence, patently ambiguous documents. Thus, the property in which 50 limited partners had a financial interest was taken from them by court order without any serious court consideration as to whether the liens which Gold sought to enforce were or were not valid liens. [*Compare, Fuentes v. Shevin, Attorney General of Florida,* 407 U.S. 67 (1972) — seizure of goods purchased under conditional sales contract without hearing violates due process of law.]

Similarly, the trial court took away from Kimberly Laurins, the infant daughter of the individual defendant Aleksandrs V. Laurins, the residential unit which Wisconsin Avenue Associates, Inc. had sold to her. The record shows that Kimberly Laurins was never at any time a party to any of the litigation. The record is totally devoid of any evidence to show that the sale to Kimberly Laurins was invalid. The sale was made pursuant to the authority given by the cooperative Association to Wisconsin Avenue Associates, Inc. so that the motives for making the sale to Kimberly Laurins rather to some other purchaser are not relevant. (*See* Appendix 3.) Therefore, since Kimberly Laurins was a necessary party, her property was taken from her without due process of law. [*See* Rule 19(a), Federal Rules of Civil Procedure; *Iron Cliffs Company v. Negaunee Iron Company*, 197 U.S. 463 (1905) - no person can be deprived of property rights by any decree in a case wherein he is not a party; *compare, The Tewa Tesague v. Morton, Secretary of Interior et al.*, 360 Fed. Supp. 452 (D.C. Dist. N. Mex. 1973) - action to cancel lease on federal land dismissed for failure to bring before the court all parties to the lease.]

Petitioner urges that the facts of this case show egregious error by the District of Columbia Court of Appeals and the Superior Court of the District of Columbia which justifies this Court in reviewing this case on its merits.

Further, this case is not merely one limited to the local law of the District of Columbia. Petitioner submits that definition of the lengths to which a federal or state court can go in enforcing its judgment by injunction is a question of national interest applicable to all federal and state courts. [*Compare,* dissenting opinion, *Gay v. United States,* 411 U.S. 974 (1972).]

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

JOHN H. MAC VEY
Attorney for Petitioner